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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-7

COMMENTS OF MAX MEDIA PROPERTIES LLC

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February 7, 1997

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To: The Commission

COMMENTS OF MAX MEDIA PROPERTIES LLC

Max Media Properties LLC ("Max Media"), by its attorneys, hereby submits its Comments in response to the Commission's Second Further Notice of Proposed Rule Making in this proceeding, FCC 96-438, adopted November 5, 1996, released November 7, 1996. Max Media supports the proposal of the Federal Communications Commission ("Commission" or "FCC") to modify its local television ownership rules so that a licensee may own either two UHF television stations or a UHF and a VHF station in the same designated market area ("DMA"). This plan should be implemented without regard to a market's size as even the smallest markets have multiple "voices" operating in them. Such a plan allows the public access to a larger number of broadcast voices and maximizes available programming. Along with this proposal, Max Media supports the Commission's plan to "grandfather" existing television local marketing agreements ("LMAs") without an arbitrary absolute limit on the length of the grandfathering effect.

Max Media's Interest

Max Media is the parent company of the licensees of UHF television stations in Syracuse, New York, Dayton, Ohio, Greensville, North Carolina, Paducah, Kentucky-Cape Girardeau, Missouri, and Charleston, South Carolina. It also has an application to acquire a UHF station at Jacksonville, Texas in the Tyler, Texas market that has been approved. In addition, the principals of Max Media have developed more UHF television stations than any other company in the country. Max Media therefore has a definable and considerable interest in the outcome of this proceeding.

Comments

Under the FCC's proposals to relax the local ownership rule,[1] the Commission's rules would be modified to prohibit overlaps based on Grade A contour within the DMA[2] instead of a blanket prohibition on Grade B overlap. The Commission went on to seek comment concerning a number of potential exceptions to the modified local ownership rules. The FCC specifically sought comment on allowing common ownership of two UHF stations, or one UHF station and one

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[1] Codified at 47 C.F.R. § 73.3555(b). "No license for a TV broadcast station shall ne granted to any party (including all parties under common control) if the grant of such license will result in overlap of the Grade B contour of the station (computed in accordance with 47 C.F.R. § 73.684) and the Grade B contour of any other TV broadcast station directly or indirectly owned, operated, or controlled by the same party."

[2] In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making, 10 FCC Rcd. 3524 (1995).

VHF station with overlapping Grade A contours in a DMA if a certain number of independently owned broadcast stations remain.[3]

Max Media supports the FCC's proposal to modify its rules to base ownership regulations on DMAs and Grade A contours and allow common ownership of two UHF stations, or one UHF and one VHF station in a single DMA. Max Media further urges the FCC to allow the dual UHF or UHF-VHF common ownership in all situations, regardless of the market size or the number of other independently owned broadcast stations in a market.

Allowing multiple ownership will serve the public interest, especially in smaller markets. Multiple ownership will create additional services in smaller markets which could not support such services if each station were independently owned. As the Commission is fully aware, a television broadcast station is extremely expensive to operate. In a small market, there are only a limited number of stations that can generate enough revenue to operate due to the limited population base. Allowing common ownership allows some of the costs to be combined so that expanded services can be offered without duplicative costs.[4] For example, Max Media has two stations which either are already on the air, or will be operating under a LMA within a month. These stations did not exist as full power over-the-air broadcast stations a year ago,

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[3] Id. at 3575-78.

[4] The Commission reached this same tentative conclusion in In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making, 10 FCC Rcd. at 3570.

and would not be able to operate in the Syracuse, New York and Paducah, Kentucky-Cape Girardeau, Missouri markets without LMAs.

Furthermore, allowing common ownership of stations on a non-LMA basis would reduce additional unnecessary expenses which would, in turn, enable the stations to invest in programming and equipment for conversion to digital technology. Stations in smaller markets which, even in 1997 are still without a full compliment of basic network affiliates, will have the most difficult time affording digital conversion. Allowing multiple ownership will therefore hasten the transformation to digital technology in all markets.

The cost savings associated with allowing common ownership have a cascade effect. More money is available for entertainment programming, news, public affairs, plus transmission and production facilities which benefit the consumer, rather than redundant overhead expenses which contribute little to what is important to the public. Multiple local ownership allows for stations to increase their economic ability to negotiate with program suppliers. An example of how multiple ownership can result in additional programming for the public comes from Norfolk, Virginia, where Max Media is headquartered and developed one of the UHF stations. In Norfolk, two stations are currently operating under a LMA. Under the LMA, these stations have started providing additional local news in the Norfolk market. The ripple effect then continues to advertisers who, in turn, have an additional outlet to air their commercials to boost sales.

By allowing limited multiple ownership of television stations in a market, the Commission would be following its policy of permitting common ownership of radio stations. In the radio industry, the Commission allowed for common ownership of radio stations in response to economic circumstances where a large number of radio stations were not able to compete profitably. This situation was brought about by the broadcast marketplace which experienced the rapid growth of radio, television, and alternative media. The Commission recognized that radio stations would be able to profit from the moderate relaxation of local ownership rules and therefore programming investments would increase.[5]

Today, the television industry faces the same dilemmas confronted by radio broadcasters when the Commission relaxed the local radio ownership rules. Norfolk, Virginia is typical of the growth and proliferation of television services. From the beginning of television service to Norfolk in 1950, and for nearly 30 years, there were only four commercial stations serving the market. A fifth station was added in 1979. However, since 1990, three new commercial television stations have gone on the air or are about to begin broadcasting. In addition to these fully competitive over-the-air stations, there is a local weather channel that has been operating for two years and a new "all news" channel

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[5] In re Revision of Radio Rules and Policies, Report and Order, 7 FCC Rcd. 2755, 2773-6 (1992); reconsideration granted in part, denied in part, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 7 FCC Rcd. 6387 (1992); further reconsideration granted in part, denied in part, Second Memorandum Opinion and Order, 9 FCC Rcd. 7183 (1994).

on cable that will commence operations during the first quarter of 1997. Both channels were made possible through the creation of the new over-the-air television voices in the market. Four of the new operations are either operated by current stations, operated under LMAs or are combined efforts of a station, a cable system and a newspaper.

The result of the proliferation of new services ultimately affects the profitability of all stations serving the market. In the Norfolk, Virginia DMA, cable television alone has caused a drop in over-the-air television broadcast viewership so that in the 6:00-8:00 p.m. time period, only fifty percent of the eighteen to forty-nine year old adults who are viewing television are watching an over-the-air station. Unfortunately, this trend of decreased viewership is occurring nationwide, and the market is structured so that the erosion is unlikely to ever reverse itself.

The market trends bring forth another fear from broadcasters concerning cable television carriage of local stations. Many broadcasters are concerned that if "must carry" rules for cable television are eliminated, cable systems will remove weak local stations so that capacity can be used to carry services that either pay for carriage, provide inventory for local sale, or which allow the cable provider to increase charges to consumers. Thus, the FCC should act in the best interest of maintaining local service by permitting multiple ownership in a market as joint owners will be able to negotiate for continued carriage of a weaker station along with their stronger station.

Finally, as shown above, the use of LMAs has allowed marginal stations to continue to operate and thus increase and diversify the programs available to the public. As the Commission found, such arrangements allow stations to pool resources by cooperating in joint advertising, shared technical facilities, and participate in joint programming arrangements.[6] If the Commission determines that a change in rules is in order regarding LMA attribution, it should allow those stations operating under LMAs to continue to do so until the LMAs expire under their own terms. Such action is appropriate as these stations were constructed and operated with the expectation that they would be operating under LMAs.

Again, the Commission has already forged a path for the grandfathering of LMAs during a rule change that pertained to the radio industry.[7] As with radio, if the Commission alters the rules pertaining to LMAs, existing LMAs should be allowed to continue under a grandfathering system. Under such a system, the Commission should not adopt an arbitrary deadline as to when the grandfathering expires. LMA use has proven itself to be effective and arbitrary deadlines should not cut off the benefits of a LMA. This point assumes that a LMA will be renegotiated at its expiration, just as network affiliations expire periodically and are renewed.

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[6] In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making, 10 FCC Rcd. at 3581-2.

[7] In re Revision of Radio Rules and Policies, Second Memorandum Opinion and Order, 9 FCC Rcd. 7183, 7191-3 (1994).

Conclusion

The Commission has already been down the path of allowing multiple ownership in the radio industry. It is time to protect the consumer in the free over-the-air television market as the costs of operating a television station skyrocket while viewership, and hence revenues, fragment. This problem is especially acute in small markets. All markets, including small markets, have multiple voices such as cable, DBS, newspapers, and radio, as well as over-the-air television. Free over-the-air television should not be the only service that is prohibited from having an equal opportunity to compete in small markets. Multiple ownership allows stations to pool resources and provide expanded and continued service to the public.

WHEREFORE, for the above reasons, Max Media urges the Commission to permit common ownership of an UHF and a VHF station, or two UHF stations in the same DMA regardless of market size or the number of voices in the market.[8] For these same reasons, the Commission should allow existing LMAs to continue without

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[8] The Commission should not narrowly construe "voices" in a market to only include over-the-air television as the public receives information from numerous sources, including radio, newspapers, cable television, DBS, and the Internet.

interference if the FCC deems it necessary to change the rules pertaining to a LMA's effect on ownership attribution.

Respectfully submitted,

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Dated: February 7, 1997